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No. 74-850

In the Supreme Court of the United States

OCTOBER TERM, 1974

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, PETITIONER

v.

WILLIAM G. WEBER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the Secretary of Health, Education and Welfare, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. A, *infra,* pp. 1A–3A) is reported at 503 F. 2d 1049. The district court entered no opinion.

JURISDICTION

The judgment of the court of appeals (App. B, *infra,* p. 5A) was entered on September 13, 1974. On December 5, 1974, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to

and including January 11, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Federal Magistrates Act of 1968 (28 U.S.C. 636) authorizes United States district courts to refer all Social Security benefit cases to United States magistrates to prepare a recommended decision.

CONSTITUTION, STATUTES AND RULES

Relevant provisions of Article III of the United States Constitution, of the Federal Magistrates Act, of the Social Security Act, and of Rule 53, Federal Rules of Civil Procedure, are reproduced in App. D, *infra,* pp. 9A–12A.

General Order No. 104–D of the United States District Court for the Central District of California is reproduced in App. E, *infra,* pp. 13A–20A.

STATEMENT

1. Respondent William G. Weber brought this action in the United States District Court for the Central District of California under Section 205(g) of the Social Security Act [1] to obtain judicial review of a final determination by the Secretary of Health, Education, and Welfare that he was not entitled to reimbursement under Title XVIII of the Act (Medicare) [2] for medical payments made on behalf of his wife (now deceased). On the same day the complaint was

[1] 42 U.S.C. 405(g).

[2] 42 U.S.C. ch. 7, subch. XVIII. Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), governs judicial review of Medicare claims. See Section 1869(b) of the Act, 42 U.S.C. (1970 ed. and 1972 supp.) 1395ff(b).

filed, the clerk of the district court assigned the case to Judge Curtis, but referred it to United States Magistrate Kronenberg "to notice and conduct such factual hearings and legal argument as may be appropriate," and to "prepare a proposed written order or decision, together with proposed findings of fact and conclusions of law where necessary or appropriate, which shall be transmitted in writing to * * * [Judge Curtis]" (R. 3).[3]

The clerk acted pursuant to General Order No. 104–D of the district court (App. E, *infra,* pp. 13A–20A), which requires reference to a magistrate for review, hearing, and preparation of a proposed decision, of various federal civil cases involving review of an administrative record, including all Social Security cases.[4]

[3] "R." designates the record on appeal, consisting of the pleadings in the district court.

[4] Section I(A) of General Order No. 104–D (App. E, *infra,* p. 15A). General Order No. 104–D states in pertinent part: "The Magistrate is authorized to notice, hear and conduct such factual hearing and legal argument as may be appropriate. Thereafter, he shall prepare a proposed written order or decision, together with proposed findings of fact and conclusions of law where necessary or appropriate, which shall be served by mail upon all parties. Any party having objections to the proposed order or decision or to any proposed finding of fact or conclusion of law shall, not later than 20 days after such service upon him, file and serve a written statement of objections with points and authorities in support thereof. Any reply to said objections and points and authorities shall be in writing and filed not later than 20 days from the date of service of said objections. No response to the reply will be received. The Magistrate shall promptly examine the documents relating to said objections and he may conduct such further hearing as he deems necessary, make such additional, supplemental or substitute proposed findings and conclusions, and such modifications

The Secretary moved to vacate the order of reference on the ground that referral of the case to a magistrate pursuant to the district court's general order violated Rule 53(b) of the Federal Rules of Civil Procedure, was not authorized under the Federal Magistrates Act of 1968, was of doubtful constitutionality, and interjected an additional level of review in the district court in contravention of the judicial review provisions of the Social Security Act (R. 6).

The district court denied the Secretary's motion to vacate the order of reference, but certified the issue for interlocutory appeal under 28 U.S.C. 1292(b) (App. C, *infra,* pp. 7A–8A). The court of appeals accepted the Secretary's interlocutory appeal.[5]

The court of appeals affirmed the order of reference (App. A, *infra,* pp. 1A–3A). The court summarized the basic operation of General Order No. 104–D as follows (App. A, *infra,* p. 3A):

> [T]he procedure followed under the rule objected to is for the magistrate to examine the written administrative record and make a recommendation to the judge. The parties are advised of the magistrate's initial opinion and are afforded time to present objections. If objection be made, an opportunity is given to present briefs and argument in support thereof. The magistrate may then revise his original recommendation or adhere to it. Under either contingency he then forwards his recommendation and the administrative record together with a report of proceedings before him, if any, to the judge for final action.[6]

The court of appeals concluded, without elaboration (*ibid.*):

> [W]e hold that the delegated authority is well within the intent of Congress in adopting the Magistrate Act; that the judicial review contemplated by the Social Security Act is adequately provided and that the procedure comports with the requirement of exercise of judicial power under Article III of the United States Constitution.

REASONS FOR GRANTING THE WRIT

This case presents an important issue of judicial administration that calls for review by this Court: the propriety of a growing tendency among the district courts to refer whole categories of important cases to

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in the proposed judgment, as he deems appropriate and, if such are made, shall serve them by mail upon all parties. * * * When the Magistrate has taken the action which he deems appropriate and a transcript has been filed (when a transcript is required), the Magistrate shall forward the entire file to the Judge to whom the matter is assigned for final action and notify the parties accordingly. Upon receipt of the file, the Judge will calendar the matter for oral argument before him if he deems it necessary or appropriate." App. E, *infra,* pp. 13A–14A.

[5] Respondent Weber took no position on the reference of his case to a magistrate and did not participate in the appeal. However, the government's position was opposed by the National Council of United States Magistrates, which participated in the appeal as *amicus curiae,* filing a brief and presenting oral argument.

[6] General Order No. 104–D also authorizes the magistrate to make "findings of fact" (App. E, *infra,* p. 13A). The court considered this to be surplusage in the context of Social Security cases, in view of the statutory requirement (42 U.S.C. 405(g)) of review under the substantial evidence standard (App. A, *infra,* p. 3A n. 1).

United States magistrates to prepare recommended decisions.[7] The holding of the court of appeals approving that practice here conflicts with the decision of the Court of Appeals for the Sixth Circuit in *Ingram* v. *Richardson,* 471 F. 2d 1268, which disapproved a similar reference of a social security case to a magistrate. As we show below, the Federal Magistrates Act of 1968 does not authorize this practice.

1. The Federal Magistrates Act of 1968[8] authorized the district courts to establish rules pursuant to which United States magistrates may be assigned "such additional duties as are not inconsistent with the Constitution and laws of the United States." 28 U.S.C. 636(b). Under that provision the "additional duties" authorized by district court rule may include, but are not restricted to: (1) "service as a special master in an appropriate civil action, pursuant to * * * the Federal Rules of Civil Procedure * * *" (2) "assistance to a district judge in the conduct of pretrial or discovery proceedings * * *" and (3) review of applications for posttrial relief in criminal cases, to facilitate the decision on whether to hold a hearing.

A growing number of district courts have established rules under the "additional duties" provision authorizing or requiring reference of all Social Security cases (and other federal civil cases involving re-

[7] The issue was not resolved by this Court's decision in *Wingo* v. *Wedding*, No. 73-846, decided June 26, 1974, which held that the Magistrates Act did not authorize magistrates to conduct evidentiary hearings in *habeas corpus* cases. *Wingo* turned on the language of 28 U.S.C. 2243, governing applications for *habeas corpus*.

[8] 82 Stat. 1107, 1113.

view of an administrative record)[9] to United States magistrates to prepare recommended decisions. The General Order of the district court in this case (General Order No. 104–D, App. E, *infra,* pp. 13A–20A), is typical of such rules. Under these provisions, the practice is developing under which the district court customarily adopts the magistrate's proposed decision as that of the court.[10]

During the fiscal year 1974, magistrates were used by 26 of the 91 United States district courts to prepare recommended decisions in Social Security cases. They followed that practice in 277 of those cases,[11] which is 10 percent of the total of 2,783 Social Security cases[12] terminated in all district courts in that year.

[9] *E.g.*, review of orders of the Interstate Commerce Commission, orders of the Immigration and Naturalization Service, adverse actions of the Civil Service Commission, and administrative denial of licenses. See, *e.g.*, General Order No. 104–D of the Central District of California (App. E, *infra*, pp. 13A–20A); Local Court Rule 290 of the Northern District of Georgia, set forth in *Bell* v. *Weinberger*, 378 F. Supp. 198, 202–203 (N.D. Ga.).

[10] We have examined all cases referred to magistrates in the Central District of California (10) and the Northern District of Georgia (28) in fiscal year 1974. In 30 of the 38 cases, the district court adopted the magistrate's recommended decision; in the other 8 cases there was a stipulated remand to the Secretary for further evidence. In no case did the judge reject the magistrate's recommendation.

[11] 1974 Annual Report of the Director, Administrative Office of the United States Courts, pp. A–102, A–103, table M 4 (hereinafter cited as 1974 Annual Report).

[12] *Id.* at p. A–25, table C 4.

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Until this Court resolves the issue, there is likely to be further substantial and time-consuming litigation of a collateral issue in Social Security cases. The government believes, as the Sixth Circuit ruled in *Ingram* (see below), that the Federal Magistrates Act does not authorize referral of Social Security cases to magistrates. See 38 Fed. Reg. 34203, 28 C.F.R. 50.11. Accordingly, it has objected to all references of Social Security cases to magistrates. In some cases Social Security claimants have joined with the government in objecting to the reference, because of the additional burdens that the two-step procedure of review involved in the use of magistrates imposes upon them. See, *e.g., Bane* v. *Weinberger,* C.D. Cal., No. 72–2243–IH(P), decided December 11, 1974; *Sullivan* v. *Weinberger,* C.D. Cal., No. 73–2439–RF(K), dismissed October 30, 1974.

2. The decision in this case conflicts with *Ingram* v. *Richardson,* 471 F. 2d 1268 (C.A. 6), where the court of appeals ruled that "[i]t was error for the District Court to refer [this Social Security] case to the magistrate" (*id.* at 1272). The case involved a social security disability claim, which the Secretary denied. The claimant sought review in the district court, and the case was referred, without objection from either party, to a magistrate, whose recommended decision in favor of the Secretary the district court adopted (*id.* at 1269–1270).

On appeal, the court of appeals *sua sponte* first considered the propriety of the reference to a magistrate, and concluded that it constituted an improper

reference to a special master because no "exceptional conditions" existed.[14] On the merits, however, the court reversed the Secretary's finding that the claimant was not disabled as not supported by substantial evidence. While the ruling on the magistrate issue technically was thus dictum, it announced the rule for the Sixth Circuit. If the instant case had arisen in that circuit, the decision on the propriety of the reference would have been the other way.

3. The court of appeals erred in holding that reference of Social Security cases to magistrates to prepare a recommended decision "is well within the intent of Congress in adopting the Magistrate Act" (App. A, *infra,* p. 3A).

a. The Magistrates Act permits the magistrate to serve, among other things, "as a special master in an appropriate civil action, pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure * * *." 28 U.S.C. 636(b)(1). Rule 53 of those rules, which deals with masters, provides in subsection (b) that "[a] reference to a master shall be the exception and not the rule," and states that in nonjury cases reference to a master "shall be made only upon a showing that some exceptional condition requires it." The reference of a Social Security case to a magistrate to prepare a recommended decision is a reference to a special master; the preparation of such a decision is a typical function assigned to a master. Cf. *LaBuy* v. *Howes Leather Co.,* 352 U.S. 249, 253.

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[14] The court of appeals in the instant case specifically rejected the contention that a Social Security reference was a reference to a special master (App. A, *infra,* p. 2A).

The legislative history of the Magistrates Act shows that Congress was particularly concerned that use of magistrates be made in compliance with Rule 53(b). The Senate Report, noting this court's decision in *LaBuy* v. *Howes Leather Co., supra,*[15] stressed that the limitations upon the use of magistrates in Section 636(b)(1), including Rule 53(b), were designed to "protect against any abdication of the decisionmaking responsibility that is properly that of the district courts." S. Rep. No. 371, 90th Cong., 1st Sess., p. 25. Automatic reference of all Social Security cases to magistrates, without consideration of whether the particular case involves "exceptional circumstances" that warrant such action, is precisely the type of "abdication of decisionmaking responsibility" which Congress sought to avoid in the Magistrates Act.[16]

b. Even if Migistrates are not special masters, the Magistrates Act does not permit the significant delegation of judicial functions that the blanket referral procedure involves. Section 636(b) permits assignment to magistrates of such "additional duties" as are not inconsistent with the Constitution and laws of the United States. In the Magistrates Act, Congress ex-

[15] *LaBuy* held that crowded dockets did not constitute an "exceptional condition" under Rule 53. 352 U.S. at 258–259.

[16] Although Social Security cases do not require fact finding by the magistrate, but usually a determination whether substantial evidence in the record supports the findings, this distinction does not justify a blanket reference of all such cases to a master. Masters are authorized to make proposed conclusions of law as well as findings of fact. Rule 53(e)(1). In either situation Congress intended that only exceptional circumstances would warrant the delegation of such functions to a non-Article III judge.

pressly assigned minor criminal jurisdiction to magistrates, with the consent of the parties and a right to "appeal" to the district judge.[17] In light of this provision, the district courts' authority to give magistrates "additional duties" does not empower them to assign to these officers such a major judicial function as initially reviewing Social Security cases.

The Magistrates Act was enacted "to cull from the ever-growing workload of the U.S. district courts matters that are more desirably performed by a lower tier of judicial officers." S. Rep. No. 371, 90th Cong., 1st Sess., p. 9; H. Rep. No. 1629, 90th Cong., 2d Sess., p. 12. There is no indication, however, that Congress thought that the major role that the magistrate performs in the decisionmaking function under the reference is a task "more desirably performed by a lower tier of judicial officers."[18]

In *TPO, Inc.* v. *McMillen,* 460 F. 2d 348 (C.A. 7), the court held that a magistrate had no power under the Act to adjudicate a dispositive motion, but also expressed doubt "that situations of this kind would be remedied by the magistrate's simply recommending to the district judge instead of adjudicating." 460 F. 2d at 360–361 n. 62. The court cited *Rainha* v. *Cassidy,* 454 F. 2d 207, 208 (C.A. 1), which disapproved any procedure that was only "a pro forma laying on of hands by the district court"; and observed that the full exercise of adjudicative respon-

[17] Section 302 of the Magistrates Act, 82 Stat. 1115–1116, amending 18 U.S.C. 3401(b) and 3402.

[18] There is no mention in the legislative history of the Magistrates Act of any such scheme.

sibility by the district judge in a reference situation (by an "appeal" from a magistrate's decision) "would conceivably [be] a greater burden than * * * simply performing its own adjudications." 460 F. 2d at 361. Congress did not intend such a result when it enacted the "additional duties" provision of the Magistrates Act.

c. The referral procedure also violates Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), authorizing the district courts to render a decision "upon the pleadings and transcript of the record." This language contemplates an expeditious review of the case by a judge based on the administrative record. Under the referral procedure the judge also reviews the recommended decision of a magistrate, and, indeed, is likely to base his judgment primarily on that recommendation, rather than on the parties' arguments and the administrative record.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be granted.

ROBERT H. BORK,
Solicitor General.
CARLA A. HILLS,
Assistant Attorney General.
MORTON HOLLANDER,
MICHAEL KIMMEL,
Attorneys.

JANUARY 1975.

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APPENDIX A

United States Court of Appeals for the Ninth Circuit

No. 73-3593

WILLIAM G. WEBER, PLAINTIFF-APPELLEE,

v.

SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT-APPELLANT.

SEPTEMBER 13, 1974

On appeal from the United States District Court for the Central District of California

Before: CHAMBERS and CHOY, *Circuit Judges,* and MCNICHOLS* *District Judge.*

PER CURIAM:

This interlocutory appeal presents another in what will, no doubt, be an ongoing series of cases designed to judicially establish the perimeters of powers and duties which may be delegated to United States magistrates under the broad general authority statutorily provided by 28 U.S.C. § 636(b).

General Order No. 104-D adopted by the district court provides, *inter alia,* for reference to a full-time U.S. magistrate of all "actions to review administra-

*Honorable Ray McNichols, Chief Judge, United States District Court for the District of Idaho, sitting by designation.

tive determinations re (sic) entitlement to benefits under the Social Security Act and related statutes, including but not limited to actions filed under 42 U.S.C. § 405(g)".

William G. Weber (herein designated as "appellee", but not truly a party to this appeal) brought an action in the district court to review a final determination of the Secretary as authorized by 42 U.S.C. § 405(g). The case was referred to a magistrate as provided by General Order No. 104–D. A motion by the Secretary praying to have the order of reference rescinded was denied and subsequently authorization for this interlocutory appeal as permitted by 28 U.S.C. § 1292(b) was granted.

The Secretary initially contends that the rule calling for routine references of action seeking judicial review of Social Security cases constitutes a blanket reference to special masters and is thus repugnant to Rule 53(b), Federal Rules of Civil Procedure. We simply disagree with this analysis.

Of more moment is appellant's attack on the practice of the court below (1) as being beyond the intended authority of the Federal Magistrate Act; (2) as contravening the purposes of the judicial review provided for under the Social Security Act; and (3) as inconsistent with Article III of the United States Constitution.

For the purposes of this appeal we are only interested in what this case *is* about, not what it *might have been* about.

The scope of judicial review of final determinations by the Secretary in actions such as that before us is narrowly circumscribed by the statute. The district court is limited to an examination of the administrative record to determine if there is substantial evidence in the record to support the decision of the Secretary. The findings of the Secretary as to any

fact, if supported by substantial evidence, is conclusive.[1] Appellant conceded at argument that the procedure followed under the rule objected to is for the magistrate to examine the written administrative record and make a recommendation to the judge. The parties are advised of the magistrate's initial opinion and are afforded time to present objections. If objection be made, an opportunity is given to present briefs and argument in support thereof. The magistrate may then revise his original recommendation or adhere to it. Under either contingency he then forwards his recommendation and the administrative record together with a report of proceedings before him, if any, to the judge for final action.

As so applied, we hold that the delegated authority is well within the intent of Congress in adopting the Magistrate Act; that the judicial review contemplated by the Social Security Act is adequately provided and that the procedure comports with the requirement of exercise of judicial power under Article III of the United States Constitution. Were the broad provisions of General Order No. 104–D to be resorted to in the type of judicial review before us, the Secretary might have grounds to complain. As applied, the rule is not vulnerable to the attack here mounted.

We believe our holding is consistent with the teachings of both *Wingo v. Wedding,* —— U.S. ——, 42 U.S.L.W. 5167 (S. Ct. June 26, 1974) and *Campbell v. United States District Court,* — F. 2d —— (9th Cir. 1974), (Case #73–3022, Slip Opinion April 19, 1974, amended Aug. 15, 1974).

Affirmed.

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[1] In view of this limitation on the scope of review, the language in General Order No. 104–D providing for findings by the magistrate is at worst surplusage.

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APPENDIX B

United States Court of Appeals for the Ninth Circuit

No. 73-3593 (D.C. 73-2431)

WILLIAM G. WEBER, PLAINTIFF-APPELLEE

v.

SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Central District of California

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THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered September 13, 1974.

APPENDIX C

United States District Court, Central District of California

Civil No. 73-2431-JWC(K)

WILLIAM G. WEBER, PLAINTIFF,

v.

SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT.

Order denying defendant's motion to vacate notice and order of reference to magistrate; and, certification for interlocutory appeal

This matter came on for hearing of defendant's Motion to Vacate Notice and Order of Reference to Magistrate Pursuant to General Order 104-D on November 19, 1973; there was no appearance for the plaintiff, and the defendant was represented by William D. Keller, United States Attorney, Frederick M. Brosio, Jr., Assistant U.S. Attorney, Chief, Civil Division, Carolyn M. Reynolds, Assistant U.S. Attorney, by Carolyn M. Reynolds, and after a thorough consideration of the Motion and the Memorandum of Points and Authorities in Support thereof, and being fully advised, Wherefore,

IT IS ORDERED, ADJUDGED AND DECREED that defendant's Motion to Vacate Notice and Order

of Reference to Magistrate Pursuant to General Order 104–D be, and the same is hereby, denied.

The Court, finding that this Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this Order may materially advance the ultimate termination of the litigation, hereby certifies this Order for an interlocutory appeal pursuant to 28 U.S.C. 1292(b).

DATED: This 26 day of November, 1973.

JESSE W. CURTIS,
United States District Judge.

ENTERED:
November 28, 1973

APPENDIX D

Constitution, Statutes and Rules

1. Article III of the United States Constitution provides in pertinent part:

> SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
>
> SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under * * * the Laws of the United States * * *.

2. Section 101 of the Federal Magistrates Act of 1968, 82 Stat. 1107, 1108, 1113, added a new section 636(b) of Title 28, United States Code, which provides:

> (b) Any district court of the United States, by the concurrence of a majority of all the judges of such district court, may establish rules pursuant to which any full time United States magistrate, or, where there is no full-time magistrate reasonably available, any part-time magistrate specially designated by the court, may be assigned within the territorial jurisdiction of such court such additional duties as are not inconsistent with the Constitution and laws of the United States. The additional

duties authorized by rule may include, but are not restricted to—

(1) service as a special master in an appropriate civil action, pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts;

(2) assistance to a district judge in the conduct of pretrial or discovery procedings in civil or criminal actions; and

(3) preliminary review of applications for posttrial relief made by individuals convicted of criminal offenses, and submission of a report and recommendations to facilitate the decision of the district judge having jurisdiction over the case as to whether there should be a hearing.

3. Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), provides:

(g) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming,

modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Secretary or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Secretary, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or its decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

4. Rule 53, Federal Rules of Civil Procedure, provides in pertinent part:

(b) *Reference.* A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

* * * * *

(e) *Report.*

(1) *Contents and Filing.* The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) *In Non-Jury Actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

APPENDIX E

United States District Court Central District of California

General Order No. 104–D

Referral of various types of civil matters to the full-time magistrates and procedures to be followed therein

Upon the filing of any case of the types listed under I and II below, the case shall be assigned to a Judge of this Court by the drawing of a card under the regular and usual system. Immediately after said Judge's card is drawn and the case is assigned to him, a card shall be drawn by lot for assignment of the same case to one of the full-time Magistrates. Each of said cases is hereby referred to the full-time Magistrate so drawn. A document reciting that the case has been referred under this General Order and specifying the Magistrate to whom it was referred shall be entered in the file and a copy of said document shall be transmitted to the Judge involved. A copy of said document shall be served by plaintiff with the summons and complaint on each defendant served. The Magistrate is authorized to notice, hear and conduct such factual hearing and legal argument as may be appropriate. Thereafter, he shall prepare a proposed written order or decision, together with proposed findings of fact and conclusions of law where necessary or appropriate, which shall be served by mail upon all par-

ties. Any party having objections to the proposed order or decision or to any proposed finding of fact or conclusion of law shall, not later than 20 days after such service upon him, file and serve a written statement of objections with points and authorities in support thereof. Any reply to said objections and points and authorities shall be in writing and filed not later than 20 days from the date of service of said objections. No response to the reply will be received. The Magistrate shall promptly examine the documents relating to said objections and he may conduct such further hearing as he deems necessary, make such additional, supplemental or substitute proposed findings and conclusions, and such modifications in the proposed judgment, as he deems appropriate and, if such are made, shall serve them by mail upon all parties. If said objections attack any proposed finding of fact which is not rendered moot by an additional hearing, supplemental or substitute findings and/or modified judgment, and if an evidentiary hearing was conducted by the Magistrate, the dissatisfied party shall promptly obtain and file a transcript of the hearing or pertinent part thereof. The Magistrate may fix the time for obtaining the transcript and upon a showing of unavoidable delay, extend the time for filing the transcript. When the Magistrate has taken the action which he deems appropriate and a transcript has been filed (when a transcript is required), the Magistrate shall forward the entire file to the Judge to whom the matter is assigned for final action and notify the parties accordingly. Upon receipt of the file, the Judge will calendar the matter for oral argument before him if he deems it necessary or appropriate.

I. MATTERS IN WHICH THE DISTRICT COURT IS CALLED ON TO REVIEW AN ADMINISTRATIVE OR JUDICIAL RECORD

(A) Actions to review administrative determinations re entitlement to benefits under the Social Security Act and related statutes, including but not limited to actions filed under 42 U.S.C. § 405(g).

(B) Actions filed by the United States or a carrier to review, implement or restrain orders of the Interstate Commerce Commission re freight overcharges, including but not limited to actions under 28 U.S.C. § 1336 and 49 U.S.C. § 304a.

(C) Actions, whether in the form of judicial review, habeas corpus or otherwise, for review of orders and other actions of the Immigration and Naturalization Service. Included, but not by way of limitation, are actions involving deportation orders, denial of preference classification visas and denial of petitions to adjust status.

(D) Actions for review of adjudications by the Civil Service Commission, or the various departments or agencies, involving personnel actions such as wrongful discharge, reductions in force, transfers, retirements, etc.

(E) Actions for review of an order of any branch or establishment of the military service denying discharge of petitioner from the military, whether such actions are brought in the form of petitions for judicial review, habeas corpus or actions for declaratory relief and injunction.

(F) Actions filed pursuant to 18 U.S.C. § 923(f)(3) to review administrative decisions denying applications for licenses to engage in business as a firearms or ammunition importer, manufacturer or dealer.

(G) Actions to review administrative decisions by the Department of Labor denying applications for

alien employment certification required pursuant to the provisions of 8 U.S.C. § 1182(a)(14).

II. ACTIONS FOR THE COLLECTION AND ENFORCEMENT OF CIVIL PENALTIES

(A) Actions to recover civil penalties relating to boating, including, but not by way of limitation, penalties under the Coordinated National Boating Safety Program (46 U.S.C. §§ 1451–89 inclusive) and penalties under the Motor Boat Act of 1940 (46 U.S.C. §§ 526–526u inclusive).

(B) Actions to recover FAA penalties imposed under the Federal Aviation Act, including, but not by way of limitation, penalties imposed under 49 U.S.C. §§ 1471 ff.

(C) Actions to recover civil bomb hoax penalties, including, but not by way of limitation, penalties under 18 U.S.C. § 35(a).

(D) Actions to recover Interstate Commerce Commission penalties including, but not by way of limitation, penalties under 49 U.S.C. § 322(h).

(E) Actions to recover penalties under the Packers and Stockyards Act, including, but not by way of limitation, penalties under 7 U.S.C. § 203.

(F) Actions to recover penalties under the Wheat Marketing Allocation Act, including, but not by way of limitation, penalties under 7 U.S.C. § 1379 i (a).

REFERENCE OF CERTAIN OTHER CIVIL MATTERS

The following additional categories of miscellaneous civil matters are referred to the Magistrates for handling:

(A) All actions and other matters involving Letters Rogatory or depositions required in connection with proceedings pending in any foreign country.

(B) All matters relating to the issuance of writs of attachment under California CCP§§ 538–9, including noticing and conducting hearings, issuance of temporary restraining orders, directing the issuance of writs of attachment after hearing, the immediate issuance of such writs without a hearing, as provided in § 538.5, the approval of bonds or other undertakings for such writs and orders enforcing liability thereon.

(C) The following categories of cases (which have not heretofore been referred to the Magistrates by previous action of the Court) are now referred to the Magistrates:

(1) Civil Rights Act cases filed by a plaintiff appearing in pro per but who is not in confinement (except those arising under Title VII Employment Discrimination).

(2) Civil Rights Act cases where plaintiff is confined but has retained counsel.

(3) Habeas corpus cases filed by present or former state prisoners having retained counsel.

Each of such cases shall be assigned to a judge of this Court by the drawing of a card under the regular and usual system. Immediately after said Judge's card is drawn and the case is assigned to him, a card shall be drawn by lot for assignment of the same case to one of the full-time Magistrates. Each of said cases is hereby referred to the full-time Magistrate so drawn as a Master and an order of reference for such case shall be entered in the file. The Magistrate is authorized to notice and conduct such factual hearing and legal argument as may be appropriate. Thereafter, he shall prepare a report and recommendation and proposed order and decision, together with findings of fact and conclusions of law where necessary or appropriate, which shall be served by mail upon all parties. Any party having objections to the proposed order shall, not later than 20 days after such

service upon him, file and serve a written statement of objections with points and authorities in support thereof. Any reply to said objections and points and authorities shall be in writing and filed not later than 20 days from the date of service of said objections. No response to the reply will be received. The Magistrate shall promptly examine the documents relating to said objections and he may conduct such further hearing as he deems necessary, make such additional, supplemental or substitute proposed findings and conclusions, and such modifications in the proposed judgment, as he deems appropriate and, if such are made, shall serve them by mail upon all parties. If said objections attack any proposed finding of fact which is not rendered moot by an additional hearing, supplemental or substitute findings and/or modified judgment, and if an evidentiary hearing was conducted by the Magistrate, the dissatisfied party shall promptly obtain and file a transcript of the hearing or pertinent part thereof. The Magistrate may fix the time for obtaining the transcript and upon a showing of unavoidable delay, extend the time for filing the transcript. When the Magistrate has taken the action which he deems appropriate and a transcript has been filed (when a transcript is required), the Magistrate shall forward the entire file to the Judge to whom the matter is assigned for final action and notify the parties accordingly. Upon receipt of the file, the Judge will calendar the matter for oral argument before him if he deems it necessary or appropriate.

GENERAL INTERPRETIVE PROVISION

Included in the delegations, appointments and grants to the Magistrates herein contained shall be all

powers reasonably necessary to implement and give effect to such delegations, appointments and grants.

The full-time Magistrate to whom any case of any of the types listed above is assigned, shall have the power, if a jury trial before a District Judge is demanded, or if the right to a trial de novo before a District Judge is asserted, to determine if such right exists and, as to jury trials, if the demand therefor has been properly and timely made. Upon his finding that the right exists as asserted, the case shall be forthwith transferred from the Magistrate to the calendar of the District Judge to whom it was originally assigned and all proceedings thereafter shall be before said Judge.

Except where inconsistent with this or any other General Order of the Court, all of the Local Rules of this Court shall be applicable to proceedings before the Magistrates.

DATED: July 9, 1973.

ALBERT LEE STEPHENS, Jr.,
Chief United States District Judge.
JESSE W. CURTIS,
United States District Judge.
E. AVERY CRARY,
United States District Judge.
FRANCIS C. WHELAN,
United States District Judge.
IRVING HILL,
United States District Judge.
A. ANDREW HAUK,
United States District Judge.
WILLIAM P. GRAY,
United States District Judge.
WARREN J. FERGUSON,
United States District Judge.

CHARLES H. CARR,
United States District Judge.
MANUEL L. REAL,
United States District Judge.
HARRY PREGERSON,
United States District Judge.
DAVID W. WILLIAMS,
United States District Judge.
ROBERT J. KELLEHER,
United States District Judge.
WM. MATTHEW BYRNE, JR.,
United States District Judge.
LAWRENCE T. LYDICK,
United States District Judge.
MALCOLM M. LUCAS,
United States District Judge.